

**United States Department of Labor
Employees' Compensation Appeals Board**

P.N., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Atlanta, GA, Employer**

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**Docket No. 07-2332
Issued: March 3, 2008**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 14, 2007 appellant filed a timely appeal from the June 15, 2007 merit decision of the Office of Workers' Compensation Programs, which awarded scheduled compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether appellant has more than a five percent permanent impairment of her right upper extremity.

FACTUAL HISTORY

On November 19, 2004 appellant, then a 37-year-old mail processor, filed a claim alleging that her carpal tunnel syndrome was a result of the repetitive motions she performed in the performance of her duties. The Office accepted her claim for bilateral carpal tunnel syndrome. Appellant underwent a left carpal tunnel release on January 14, 2005, and on June 19, 2006 she received a schedule award for a five percent impairment of her left upper extremity.

Appellant underwent a right carpal tunnel release and epineurolysis on June 8, 2006. On January 17, 2007 she filed a claim for a schedule award. Appellant's orthopedic surgeon, Dr. Gokarnesan Natarajan, rated the impairment on January 11, 2007:

"This 39-year-old African American female underwent carpal tunnel release on the right wrist. She has made reasonably good recovery. On and off, she still has some tingling but she has returned to light-duty work. It has been discussed with her case manager on the last visit that some of the restrictions are going to be permanent as far as lifting and repetitive use of her right hand.

"The patient complains that she has tingling and on and off pain in her left hand and also in the left little and ring fingers. She has had a carpal tunnel release on the left wrist in 2005.

"As for her right wrist, following the recent carpal tunnel release which was in June of 2006, she seems to have reached maximum medical improvement. According to the [American Medical Association], *Guides [to the Evaluation of Permanent Impairment]*, [fifth] edition, she has a [permanent partial disability] rating of five percent to the right upper extremity which equals three percent to the total body. The patient has returned to work."

An Office medical adviser reviewed Dr. Natarajan's rating and found it to be reasonable. On June 15, 2007 the Office issued a schedule award for a five percent impairment of the right upper extremity.

This appeal followed. Appellant argues that her rating was not calculated in accordance with the A.M.A., *Guides*, which considers loss of motion, pain, weakness and sensation of the affected nerve.¹

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act² authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.³

¹ Appellant did not appeal the Office's May 30, 2007 decision denying compensation for 30.69 hours of leave without pay or the Office's June 7, 2007 decision reducing her compensation for wage loss to reflect her capacity to earn wages in her employment as a mail processor, limited duty, effective January 25, 2007.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999). Effective February 1, 2001 the Office began using the fifth edition of the A.M.A., *Guides*.

A claimant seeking compensation under the Act has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence.⁴

ANALYSIS

Only individuals with an objectively verifiable diagnosis of entrapment or compression neuropathy should qualify for a permanent impairment rating. The diagnosis is made not only on believable symptoms, but, more important, on the presence of positive clinical findings and loss of function. The diagnosis should be documented by electromyography as well as sensory and motor nerve conduction studies.⁵

If, after optimal recovery time following surgical decompression for carpal tunnel syndrome, an individual continues to complain of pain, paresthesias or difficulties in performing certain activities, three possible scenarios can be present:

1. Positive clinical findings of median nerve dysfunction and electrical conduction delay(s). The impairment due to residual carpal tunnel syndrome is rated according to the sensory and motor deficits as described in Chapter 16-5b.
2. Normal sensibility and opposition strength with abnormal sensory or motor latencies or abnormal electromyogram testing of the thenar muscles. A residual carpal tunnel syndrome is still present, and an impairment rating not to exceed five percent of the upper extremity may be justified.
3. Normal sensibility (two-point discrimination and Semmes-Weinstein monofilament testing), opposition strength, and nerve conduction studies. There is no objective basis for an impairment rating.⁶

The attending orthopedic surgeon, Dr. Natarajan, found that a residual carpal tunnel syndrome was still present on the right and rated appellant according to Scenario 2. But he did so without addressing the required electromyogram and nerve conduction study. Normally, an impairment rating that does not conform to the standards set forth in the A.M.A., *Guides* will not support the payment of a schedule award.⁷ Appellant carries the burden of proof to establish that she is entitled to a schedule award and to this end she has a responsibility to submit the medical evidence necessary to document the extent of her permanent impairment under the A.M.A., *Guides*. Because Dr. Natarajan did not report abnormal sensory or motor latencies or abnormal electromyogram testing of the thenar muscles, the Office had grounds for denying her claim. However, it gave appellant the benefit of the doubt and awarded her the maximum rating allowed under Scenario 2.

⁴ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

⁵ A.M.A., *Guides* 493.

⁶ *Id.* at 495.

⁷ *J.C.*, 58 ECAB ____ (Docket No. 07-1165, issued September 21, 2007) (finding that the report of the rating physician was of diminished probative value because it did not conform to the A.M.A., *Guides*).

The Board finds that appellant has not established more than a five percent permanent impairment of her right upper extremity. For this reason, the Board will affirm the June 15, 2007 schedule award.

CONCLUSION

The medical evidence fails to establish that appellant has more than a five percent permanent impairment of her right upper extremity, for which she has received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the June 15, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 3, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board